

PATENT

Serial No. 10/037,630

Examiner Paul D. Marcantoni, Art Unit 1755

Attorney Docket No. 72425.0105

III Remarks

Claims 1–20 remain pending in the application. Claims 1, 3, and 8 have been explicitly amended, and all of the other claims have been implicitly amended by substantive amendment of claim 1, on which all other claims are directly or indirectly dependent. The substantive amendment of claim 1 occurs by insertion of a new limitation in part (2.1.1) of the claim. This amendment is based on the last paragraph and primarily on the last sentence (before the beginning of Table 2) of page 26 of the specification.

Claim 1 has also been amended in part (2.2.3) by deleting a substantial portion of this part, including a term which the Examiner considered was indefinite under 35 U.S.C. 112, and replacing the deleted portions with the word “curing,” which is used and explained in the application in the section under the heading “Asphalt Emulsions and Forms” at page 11, line 13 to page 13, line 2. Upon review prompted by the Examiner’s objection, Applicant believes that the new language better expresses what he intended to claim and is sufficiently precise under 35 U.S.C. 112, because the term “curing” is believed to be well-understood in the art.

The other amendments of claim 1 and the amendments of claims 3 and 8 adopt the Examiner’s suggestions and are believed to need no further explanation.

The Examiner also rejected all of the original claims under 35 U.S.C. 102 and/or 103 in view of a variety of references as shown in the Office Action. It is believed that

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no such rejection of the amended claims as now pending can properly be made on such grounds, for the reasons set forth below.

A proper rejection under 102 requires that every limitation of the claim rejected be present in a single reference on which the rejection is based, and a proper rejection under 103 for *prima facie* obviousness requires that every limitation of the claim rejected be present or necessarily implied by a combination of references and/or general knowledge in the art. See *Manual of Patent Examining Procedure* Sections 2131 and 2143. Insofar as Applicant has found or the Examiner has cited in the Office Action, the limitation added by amendment to claim 1 is addressed by only two United States Patents, No. 5,341,882 to Hale (the "Hale patent") and No. 5,277,519 to Nahm (the "Nahm patent"). These two patents disclose values of 410 psi or higher for "axial compressive strength" in its examples. The Nahm patent also discloses an axial compressive strength for an activated drilling fluid of "240 psi in 2 days at ambient conditions." However, activated drilling fluid would appear to be a material distinct from Applicant's cementitious second mixture. Axial compressive strength is believed to be substantially the same as "unconfined compressive strength" as used in the instant specification, but as noted above, the values for this characteristic disclosed by the prior art are too high to meet the limitations now present in all of the amended claims. Furthermore, such high values militate against applicant's purposes for his invention, as noted in the specification at page 25, line 25 to page 26, line 12.

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IV Conclusion

It is believed that the above constitutes a complete response under 37 C.F.R. § 1.111 and that all bases of rejection in the Examiner's Action have been adequately rebutted or overcome. A Notice of Allowance in the next Office Action is, therefore, respectfully requested. The Examiner is requested to telephone the undersigned attorney if any matter that can be expected to be resolved in a telephone interview is believed to impede the allowance of the pending claims.

Respectfully submitted,


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